Supreme Court, U.S.
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No. 06-

In the Supreme Court of the United States

LOREN SEAGRAVE,

Petitioner,

v.

ROBERT JOE DEAN, PATRICK S. HENRY AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did Louisiana Supreme Court err when it affirmed the lower court's reversal of the jury verdict on petitioner's employment discrimination claim, where the lower court failed to view the entire record, thus conflicting with relevant decisions of this Court?

2. In determining whether the fact-finder reasonably concluded that an employer discriminated against an employee, should a two year old discriminatory comment, that may not amount to direct evidence, be afforded weight as circumstantial evidence?

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19th Judicial District, Louisiana
Loren Seagrave v. Louisiana State University
No. 352,739
July 1, 2003

DISTRICT COURT
19th Judicial District, Louisiana
Loren Seagrave v. Louisiana State University
No. 352,739
April 2, 2003

STATEMENT OF JURISDICTION

The Supreme Court of Louisiana filed its decision on March 17, 2006. This Petition for Writ of Certiorari is filed within 90 days of the filing of that decision. The United States Supreme Court's jurisdiction is invoked pursuant to 28 USCS § 1257 providing in pertinent part:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATUTES INVOLVED

La. R.S. 23:1006 (repealed by Section 4 of Acts 1997, No. 1409, effective August 1, 1997. Employment discrimination on account of race, color, religion, sex or national origin is now governed by La. R.S. 23:332.)

Title VII of the Civil Rights Act of 1964, 42 USC 2000 et.seq.

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS

Petitioner, Loren Seagrave, brought his suit of race discrimination in employment in the 19th Judicial District Court of Louisiana against respondents, Robert Joe Dean, Patrick S. Henry and the Board of Supervisors of Louisiana State University and the Agricultural and Mechanical College which fired Mr. Seagrave, a white male married to an African-America woman. The parties held a four-day jury trial during which the jury heard evidence that Joe Dean, defendants' decisionmaker, was biased because of Mr. Seagrave's interracial marriage and defendants' evidence that they discharged Mr. Seagrave because of his alleged inappropriate, sexual relationship with a female student. The jury also heard Mr. Seagrave's response that there had been no sexual relationship with the student. The unanimous jury returned a verdict for Loren Seagrave, finding that defendants had engaged in illegal race discrimination against petitioner. The district court denied defendants' motion for directed verdict. After reviewing the evidence the Louisiana First Circuit Court of Appeals reversed the jury verdict concluding that Joe Dean's comment that Mr. Seagrave would not be promoted because he was marrying an African-American woman "...did not satisfy the criteria for workplace comments to be sufficient evidence of discrimination." In rendering this decision the appellate court improperly relied on *Krystek v. University of Southern Mississippi*, 164 F.3d 251, 256 (5th Cir. 1999) while, at the same time, ignoring the totality of the trial record and failed to consider its decision in the light most favorable to the jury verdict. Loren Seagrave filed for rehearing which the appellate court denied. Mr. Seagrave subsequently filed a Petition for a Writ of Certiorari to the Supreme Court of Louisiana which denied it without assigning any reasons, written or otherwise. As the state court has imported the

provisions and standards of the Title VII of the Civil Rights Act of 1964 in deciding this case, it thus decided on an important issue of federal law over which this Honorable Court has jurisdiction.

B. LOREN SEAGRAVE'S EVIDENCE OF RACE DISCRIMINATION

Loren Seagrave began his employment with Louisiana State University (LSU) in 1983 as Assistant Track Coach. On July 1, 1985, Coach Seagrave was promoted to the position of Head Coach, Women's Track Team. While in this capacity he led his team to four (4) national championships and nine (9) Southeastern Conference (SEC) championships. Over one-hundred twenty (120) of his athletes are recognized All-Americans and many foreign athletes have represented their respective countries in various international meets including the Olympic Games.

In the summer of 1987 Joe Dean, LSU's new athletic director, was looking to hire someone for the position of Head Coach, Men's Track Team. Sam Seemes, then interim Head Coach, Men's Track Team, recommended Loren Seagrave for the position. Mr. Dean responded that he would not do that because Loren Seagrave had experience only with training the women's team and because he was going to marry a black woman. Mr. Seagrave is white. At no time during the jury trial did Athletic Director Dean deny that he had made that racist statement. Mr. Dean, a former corporate head who had no experience in training college athletes, or in administrating an intercollegiate athletic program, hired Patrick Henry as Head Coach. Mr. Henry had only high school and junior college credentials, coaching only men in the junior college ranks, not women. After Patrick Henry was hired, Loren Seagrave's responsibilities overseeing and training the Women's Head Coach remained the same. This job required him to be available to his athletes on a "24/7 basis."

In July, 1988, Loren Seagrave received a telephone call from one of his student athletes. The call came around midnight and the young lady, who sounded extremely distraught, asked Mr. Seagrave, the coach who had recruited her, if he could meet with her right away. Mr. Seagrave went and picked the young lady up from her apartment and then went to a McDonald's restaurant. About one hour later the McDonald's closed so they had to leave. Because the young lady's roommates were at home and she did not want to speak in front of them, the only place that Coach Seagrave could think of, that could have offered some privacy, was an unoccupied apartment on Alaska Street just off the campus, which he owned. They remained there until around 6:00 a.m. talking about the young lady's problems regarding her curriculum, her seriously ill mother and her jealous fiancée whom she suspected was cheating on her.

In April, 1989, while returning from an event in Arizona together with his team, Loren Seagrave was approached by the young lady who told him that, upon their arrival at the Baton Rouge Airport, her fiancée might create a scene. Apparently he was threatening the young lady with an audio tape containing an alleged incriminating conversation between him and Coach Seagrave. Knowing that there could be no incriminating tape, as he had never said or done anything inappropriate regarding the young lady, Coach Seagrave nevertheless went to Patrick Henry and told him that there may be some disturbance upon their arrival at the airport. Mr. Seagrave then told Mr. Henry about the night he spent counseling the young student the previous summer semester. Subsequently Mr. Henry, who not long before that had asked Keith Connor, one of the assistant coaches, to keep his eyes and ears open for any information that could be used to get rid of Mr. Seagrave, went straight to Joe Dean and completely misstated the facts that he had learned from Mr. Seagrave. Despite the fact that Mr. Seagrave and the young lady had

never even implied, let alone acknowledged, that anything improper had occurred between them, Patrick Henry told Joe Dean that the two engaged in a sexual relationship. Athletic Director Dean, who had previously refused to promote Mr. Seagrave because he was marrying an African-American woman, never investigated these false allegations. Instead, he accepted at face value Mr. Henry's version of events. Mr. Dean then told Mr. Seagrave in a subsequent meeting that he was fired. However he later, in writing, suspended Mr. Seagrave. One week later, Loren Seagrave was given a 30-day termination notice. During the following 30 days defendant reassigned Mr. Seagrave from head coach to cleaning the stadium and subsequently terminated him.

C. DEFENDANTS' EVIDENCE OF A LEGITIMATE REASON

Defendants claimed they terminated Loren Seagrave because of an alleged improper relationship with a female student. In this attempt defendants introduced DEx #15, a statement allegedly signed by the student herself, wherein she confirms that she and Mr. Seagrave had engaged in a sexual relationship. The jury was presented with a plethora of inconsistent testimony from defendants regarding this document. Patrick Henry, who had assumed the Head Coach position denied to Mr. Seagrave because he was marrying an African-American woman, admitted that he typed the statement. When asked whether he gave her a chance to review the document he replied: "No, she didn't have to sign it." Shortly thereafter in his testimony Mr. Henry contradicted his statement and said that he in fact did show the student the document and that "...she read it and signed it." This alleged "confession" of a sexual relationship became even more questionable in the eyes of the jury when presented with Mr. Seagrave's testimony that the document had the student's name misspelled, the date when the alleged sexual encounter occurred was wrong, and even the date

when Patrick Henry claims he learned about it was incorrect. As for Joe Dean's recollection of when or who created the document, the jury received an even better insight of the falsity of defendants' articulated legitimate, non-discriminatory reason. When asked whether a written statement was ever taken from the female student Mr. Dean replied: "I didn't remember that, but ..'s possible."

In an attempt to attenuate the illegitimacy of Joe Dean's racist decision not to promote Loren Seagrave, defendants presented testimony inferring that in fact Patrick Henry was the decision maker in Mr. Seagrave's termination, not Mr. Dean. The jury properly dismissed this explanation in light of the fact that all the documents related to Mr. Seagrave's employment bore Joe Dean's signature, including the suspension, reassignment and termination letters. Even Patrick Henry admitted on the stand that he had to ask Mr. Dean that Loren Seagrave be terminated. The jury also heard the testimony of Keith Connor, one of perhaps the only two disinterested witnesses at trial, that Patrick Henry had asked him to keep his eyes and ears open for any information that could lead to Mr. Seagrave's termination. This testimony, together with that of Sam Seemes, the other disinterested witness, stating that Joe Dean told him Loren Seagrave would not be promoted because of his interracial marriage, led the jury to conclude that Patrick Henry was in a position to influence the already biased Joe Dean who was then willing and ready to sign the termination papers. In fact, the jury heard the unrebutted testimony of Loren Seagrave recounting the one meeting when Joe Dean received a clear indication that Patrick Henry had lied about the sexual relationship. The morning after Mr. Henry had revealed his unfounded fabrications to Joe Dean, the two called Mr. Seagrave into a meeting wherein Mr. Dean broached the subject. When confronted with the sexual relationship allegation Loren Seagrave "...looked at Pat Henry and looked back at Joe Dean and said, if Pat Henry has said this,

this is a total misrepresentation of what I have told him." Mr. Dean then confronted Mr. Henry: "...Pat, I thought you said something sexual went on between these two." In response to Mr. Dean's question "Pat Henry said absolutely nothing...He just sat there." At that point Joe Dean should have realized that Patrick Henry's version of events was distorted, had he been an objective decisionmaker. He was not. In fact, when asked whether he gave the chancellor any details about the allegations, other than the fact that Loren Seagrave had spent the night with a female student, Joe Dean testified that "That's all they needed to know." And this happened despite that fact that, according to Patrick Henry's own testimony, when the student female was "interviewed," if defendants' efforts are even worthy of the name, neither Joe Dean nor Patrick Henry even asked her if she had engaged in a sexual relationship with Mr. Seagrave. When asked what the student's response was when he recounted what he had been told, Patrick Henry replied: "...she said they did not have sex." The jury must have questioned why an employer, whose own policy requires its employees to be available for students 24 hours a day, 7 days a week, would actually sanction one who did just what the policy required of him: to be available in the middle of the night to counsel a distraught student whose family was hundreds of miles away and who had nobody else to turn to except for her trustworthy coach. The jury properly dismissed defendants' legitimate, non-discriminatory reason.

D. THE JURY VERDICT

After a four-day trial, the jury unanimously returned a verdict in favor of Loren Seagrave, awarding him $423,000 in lost wages and $350,000 in compensatory damages. After the trial defendants moved for judgment as a matter of law which the district court denied.

E. THE COURT OF APPEALS AND STATE SUPREME COURT

Defendants appealed the district court's findings claiming several assignments of error. Guided by the federal law and jurisprudence, the Louisiana First Circuit Court of Appeals inquired "...whether the record contains sufficient evidence to support the conclusions reached by the jury." The court then addresses defendants' first assignment of error claiming that Loren Seagrave had not made a prima facie case of discrimination because he was not replaced by someone outside of the protected class. Specifically, defendants claim that they replaced Mr. Seagrave with an African-American female. Although dispute arouse as to whether Myrtle Ferguson, the African-American woman, actually replaced Mr. Seagrave, as the parties sharply disputed the position that Mr. Seagrave held prior to his termination, the court nevertheless dismissed defendants' argument stating that the protected class was not comprised of African-American individuals, but rather by individuals engaged in interracial marriages. As there was no indication that Ms. Ferguson had married outside her race, the appellate court properly rejected defendants' prima facie argument.

The court next addressed defendants' argument that they came forth with sufficient evidence of a legitimate, non-discriminatory reason for termination, specifically the fact that Loren Seagrave had engaged in an all-night "counseling session" with one of his female athletes. In addressing this issue, the court weighed defendants' proffered reason solely against petitioner's evidence that, two years prior to the termination, the decisionmaker had made the never denied statement that he would not promote Mr. Seagrave because of his interracial marriage. The court then improperly applied *Krystek vs. University of Southern Mississippi*, 164 F.3d 251, 256 (5th Cir., 1999) that found a two-year old sexist remark to be an isolated comment unrelated to the adverse

employment action. The appellate court completely ignored that in *Krystek*, supra at 256, the person making the discriminatory statement did not participate in the decision making process to deny Krystek tenure, nor did he influence the decisionmaker, nor was he even in a position to influence the final decision. By contrast, Joe Dean did participate in the decision making process to terminate Loren Seagrave, he ultimately signed the termination papers himself and influenced the university's chancellor by giving him incomplete and distorted information about the relationship between Loren Seagrave and the female student. Without analogizing or distinguishing the two cases in any way, the court of appeals strictly construed the four-prong test mentioned in Krystek, supra, at 256, and concluded that Joe Dean's comment "did not satisfy the criteria for workplace comments to be sufficient evidence of discrimination." The court further stated that "...this alleged comment cannot provide sufficient evidence of discrimination, and Seagrave failed to prove his claim of race-based discrimination. The jury was clearly wrong in finding otherwise."

Thus did the appellate court reverse the jury verdict. The court completely ignored defendants' prevarication in explaining the source of their exhibit 15. In fact the court made no mention whatsoever of the unsigned, unsworn and unauthenticated statement allegedly confessing as to the sexual relationship. The court also made no mention of the contradictory statements of Patrick Henry as to whether the female student ever read or signed the document. Nor did the court's opinion mention anything about the fact that the statement misspells the name of the person who allegedly read it and/or signed it, or that the statement places the event at the wrong time. The court practically ignored the entire record. As Judge John Guidry states in his dissent, "After addressing the defendants' evidence of a nondiscriminatory reason for Seagrave's termination, the majority then apparently rests the whole of its determination on its finding that the alleged

comment made by Dean was neither proximate in time nor related to Seagrave's termination. However, when evaluating the evidence in support of Seagrave's prima facie case, together with the alleged comment, I find that the record contained sufficient evidence to support the jury's determination."

The Louisiana Supreme Court denied petitioner's application for review without any reasons, written or otherwise.

ARGUMENT

1. **Did Louisiana Supreme Court erre when it affirmed the lower court's reversal of the jury verdict on petitioner's employment discrimination claim, where the lower court failed to view the entire record, thus conflicting with relevant decisions of this Court?**

By denying petitioner's writ application the Louisiana Supreme Court affirmed the Louisiana First Circuit Court of Appeal's erroneous decision that conflicts with the law clearly established by this Honorable Court.

Without doubt the state appellate court, which the state supreme court affirmed, failed to consider the entire record when it reversed the jury verdict. In fact, the opinion itself states that a review of defendants' remaining assignments of error, which would have obviously exposed the court to the entire record, was unnecessary. The dissent confirms the majority's failure to consider the evidence as a whole: "...the majority then apparently rests the whole of its determination on its finding that the alleged comment made by Dean was neither proximate in time nor related to

Seagrave's termination." Such failure is in conflict with this Court's previous decisions:

Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000) offers ample analysis of what evidence is considered to be sufficient for a jury finding of discrimination to be upheld. Delivering the opinion for a unanimous court, Justice O'Connor states:

> The [lower] court confined its review of evidence favoring petitioner to that evidence showing that Chesnut had directed derogatory, age-based comments at petitioner, and that Chesnut had singled out petitioner for harsher treatment than younger employees. It is therefore apparent that the court believed that only this additional evidence of discrimination was relevant to whether the jury's verdict should stand.
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> ****
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> In so reasoning, the Court of Appeals misconceived the evidentiary burden borne by plaintiffs who attempt to prove intentional discrimination through indirect evidence.

Reeves, supra, at 530 US 146. Following its earlier decision in *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993), this Court held that "...it is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation." *Reeves*, supra, at 530 US 147. This Court further explained:

> ...although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. That is,

> the court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses."

Id., at 530 US 151. The Seagrave court did the exact opposite. Not only did it not give "...credence to the evidence favoring the nonmovant..," it did not even consider such evidence. In further contravention of this Court's decision, the Seagrave court blindly accepted defendants' articulated legitimate, non-discriminatory reason, despite the fact that it was offered exclusively by interested witnesses – Joe Dean and Patrick Henry – and it was sharply contradicted and, in fact, impeached.

2. In determining whether the fact-finder reasonably concluded that an employer discriminated against an employee, should a two-year-old discriminatory comment, that may not amount to direct evidence, be afforded weight as circumstantial evidence?

Ramirez Rodriguez v. Boehringer Ingelheim Pharms., Inc., 425 F.3d 67, 80 (1st Cir. 2005) disagreed with the lower court's decision to completely disregard a possibly age-related comment made one and a half years prior to plaintiff's termination. Specifically Noel Diaz, plaintiff's supervisor and District Manager, commented that he "...had instructions to cut off the heads of some 'sacred cows.'" Id. Noteworthy is the fact that the First Circuit Court of Appeals does not even mention the time that had elapsed between the comment and the termination, specifically January, 2000, through August, 2001. All the court considered was the fact that the comment could have been, and in fact was, interpreted as age-related: "...a jury relying on Oliver's

testimony could interpret Diaz's comment as a reference to age." Id.

In Loren Seagrave's case there is no dispute whether Joe Dean's comment can be interpreted as race-related or not. On the contrary, Mr. Dean's comment was quite clear and unambiguous and it was not interpreted in any way except other than race-based discrimination. Even more conclusive is the fact that the First Circuit considered the "sacred cows" comment to be relevant although made by a person in a position to influence the decisionmaker, not the decisionmaker himself. By contrast the Seagrave court considered the decisionmaker's unambiguous statement to be irrelevant, only because it was made two years prior to Loren Seagrave's termination.

Phelps v. Yale Sec., Inc., 986 F.2d 1020, 1025 (6th Cir. 1993) was faced with two age-related comments, both made one year before Phelps's termination. In upholding the district court's reversal of the jury verdict the Sixth Circuit concluded that one year between the time the comments were made and the time of the termination was too long for the comments to be given any weight. Id., at 1026. The court also found that one of the comments was too ambiguous. Id. However a full reading of the court's opinion shows that the Sixth Circuit considered the entire record before it, not just the two comments.[1] By contrast, the Seagrave court's opinion clearly indicates that Joe Dean's comment was the only thing the court considered, and the dissent confirms it.

Krystek v. University of Southern Mississippi, 164 F. 3d 251, 256 (5th Cir. 1999), the very decision that the

[1] See also *Rosso v. A.I. Root Co.*, 97 Fed. Appx. 517, 520 (6th Cir. 2004) a supervisor's comment made six months before plaintiff's discharge was considered too isolated to amount to direct evidence of discrimination. The comment was afforded no weight as circumstantial evidence.

Seagrave court relied upon in reversing the jury verdict, found that a two-year-old comment made by Krystek's supervisor was too remote in time to be given any evidentiary weight. However Waltman's comment that "There are different standards for males and females" is distinguishable from Dean's comment that Loren Seagrave would not be promoted because of his interracial marriage. Id., at 254. One major distinction is that Waltman was neither the decisionmaker, nor someone in a position to influence the decisionmaker. Id., at 256. By contrast, Joe Dean was the very person who approved and signed Loren Seagrave's termination papers. Another distinction is that the Krystek court found that Waltman's statement was "...only his perception of how tenure decisions were being made at that time. There is no evidence in the record that Waltman actually sought to enforce a different standard for men rather than women, let alone that he exercised undue influence on others...."[2] Id. By contrast, Joe Dean's statement was his stated personal reason why he would not promote Loren Seagrave. It was not merely Dean's perception but his actual biased reason that he personally enforced. Finally, the *Krystek* court, supra, at 256, did not conclude its analyses with the finding of a stray remark. It went further to evaluate the remaining evidence that Krystek had put forth to support his prima facie case and his claim that defendants' articulated non-discriminatory reason was pretextual. This the Seagrave court did not do. After ruling that Joe Dean's comment was too remote in time to amount to relevant evidence, the Seagrave court erroneously concluded that it was

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[2] See also *Trotter v. BPB Am., Inc.*, 106 Fed. Appx. 272, 276 (5th Cir. 2004), unpublished, where a supervisor's use of the n-word one year prior to plaintiff's termination was not given any probative value; *Read v. BT Alex Brown, Inc.*, 72 Fed. Appx. 112 (5th Cir. 2003) where a supervisor's age-related comment made three years before the adverse action was considered too remote in time to amount to direct evidence of discrimination. No circumstantial weight was given to the remark.

unnecessary to address defendants' remaining assignments of error.

Fisher v. Pharmacia & Upjohn, 225 F.3d 915 (8th Cir. 2000), found that a two-year-old discriminatory comment was relevant evidence. When presented with evidence of defendants' vice-president's statement that "...we need to get rid of the old guys..," the Eighth Circuit rejected defendants' argument that the comment was a stray remark not directly related to Fisher. Id., at 922. Instead the *Fisher* court found that "...such comments are surely the kind of fact which could cause a reasonable trier of fact to raise an eyebrow, thus providing additional threads of evidence that are relevant to the jury." Id., at 923 (internal citation omitted). The court further found that "Stray remarks therefore constitute circumstantial evidence that, when considered together with other evidence, may give rise to a reasonable inference of age discrimination." Id. Surely Joe Dean's comment that he would not promote Loren Seagrave two years before terminating his employment "...caused [the] reasonable trier of fact to raise an eyebrow...." Id., at 922. The Seagrave majority, however, did not think so.

Ross v. Rhodes Furniture, 146 F.3d 1286, 1291 (11th Cir. 1998) similarly found that, when made by the decisionmaker or someone in a position to influence the decisionmaker, a discriminatory comment can rise at least to the level of circumstantial evidence. Although made approximately four years prior to Ross's termination, the court found the decisionmaker's statement that "I never seen as many blacks in this building except in a Tarzan movie" to be evidence of race discrimination. The court explained:

> Although we have repeatedly held that such comments are not *direct* evidence of discrimination because they are either too

> remote in time or too attenuated because they were not directed at the plaintiff, we have not held that such comments can never constitute *circumstantial* evidence of discrimination. Other Courts of Appeals have indicated that such comments may provide circumstantial evidence to support an inference of discrimination.

Ross, supra, at 1291. If a four-year old general remark can amount to admissible circumstantial evidence, so must a two-year-old specific statement directly addressed to the employee subsequently terminated.

Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 511, 512 (4th Cir. 1994) however, found that a two-year-old comment that "...there comes a time when we have to make way for younger people..." should be given no weight.[3]

Although unclear from the court's opinion how long before the adverse decision the discriminatory comment was made, *Antol v. Perry*, 82 F.3d 1291, 1302 (3d Cir. 1996) found that a comment referring to plaintiff as "spasm head" was well regarded as evidence probative of disability discrimination. The Third Circuit did not look to the length of time between the time the comment was made and the time the agency denied Antol's job application. Instead, the court focused on who made the comment, herein the decisionmaker's supervisor, clearly in a position to influence the decisionmaker, at least to show the "...atmosphere and context in which Smith made the employment decision." Id. The Third Circuit further explained the difference between

[3] See also *Bhella v. England*, 91 Fed. Appx. 835, 846 (4th Cir. 2004) where comments such as "a mad Sikh" and "an Indian causing trouble by making complaints," made one year prior to any adverse action by the employer were given no weight.

circumstantial evidence in discrimination cases and such evidence in any other cases:

> Circumstantial proof of discrimination typically includes unflattering testimony about the employer's history and work practices--evidence which in other kinds of cases may well unfairly prejudice the jury against the defendant. **In discrimination cases, however, such background evidence may be critical for the jury's assessment of whether a given employer was more likely than not to have acted from an unlawful motive.**

Perry, supra, at 1302 (emphasis added). Such critical evidence is exactly what the Seagrave court deemed irrelevant. [4]

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[4] See also *Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326 (3d Cir. 1995). Although a non-decisionmaker's discriminatory remark "...should not be given significant or commanding weight, at trial, it may provide some relevant evidence of discrimination. We have held that a supervisor's statement about the employer's employment practices or managerial policy is relevant to show the corporate culture in which a company makes its employment decision, and may be used to build a circumstantial case of discrimination. See *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1214 (3d Cir. 1995) (discriminatory statements by nondecisionmakers properly used to build a circumstantial case of discrimination); *Lockhart v. Westinghouse Credit Corp.*, 879 F.2d 43, 54 (3d Cir. 1989) (same); see also *Josey v. John R. Hollingsworth Corp.*, 996 F.2d 632, 641 (3d Cir. 1993) (court may consider as circumstantial evidence the atmosphere in which the company made its employment decisions)."

CONCLUSION

In light of the lower court's failure to consider the record as a whole and in the light most favorable to petitioner the Louisiana Supreme Court has erroneously affirmed the lower court's reversal of the unanimous jury verdict, As then Circuit Court of Appeals Judge Samuel Alito has previously stated, a jury's findings must be affirmed unless "...the record is critically deficient of that minimum quantity of evidence from which a jury might reasonably afford relief." *Hopp v. City of Pittsburgh*, 194 F.3d 434, 439 (3d Cir. 1999), citing *Link v. Mercedes-Benz of North America*, Inc., 788 F.2d 918, 921 (3d Cir. 1986). More recently, this jurist affirmed allegiance to the efficacy of jury verdicts: "I wasn't there. I didn't hear the witnesses personally." Testimony before the U.S. Senate Judiciary Committee, Washington, D.C., January 11, 2006.

The Seagrave court made no effort whatsoever to even review the record. Had it done so, it would have found that the jury was presented with a plethora of evidence supporting a finding of discrimination. Instead, it erroneously ruled that Joe Dean's comment did not amount to direct evidence and, therefore, Loren Seagrave could show no case of discrimination. It has long been this Court's mandate that an employment discrimination plaintiff need not produce direct evidence:

> ...we should not depart from the "conventional rule of civil litigation [that] generally applies in Title VII cases." *Ibid.* That rule requires a plaintiff to prove his case "by a preponderance of the evidence," *ibid.* using "direct or circumstantial evidence," *Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 714, n. 3, 75 L. Ed. 2d 403, 103 S. Ct. 1478 (1983). We have

> often acknowledged the utility of circumstantial evidence in discrimination cases. For instance, in *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 L. Ed. 2d 105, 120 S. Ct. 2097 (2000), we recognized that evidence that a defendant's explanation for an employment practice is "unworthy of credence" is "one form of *circumstantial evidence* that is probative of intentional discrimination." *Id.*, at 147, 147 L Ed 2d 105, 120 S Ct 2097 (emphasis added). The reason for treating circumstantial and direct evidence alike is both clear and deep-rooted: "Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." *Rogers* v. *Missouri Pacific R. Co.*, 352 U.S. 500, 508, n. 17, 1 L. Ed. 2d 493, 77 S. Ct. 443 (1957).

Desert Palace, Inc. v. Costa, 539 U.S. 90, 99-100, 123 S. Ct. 2148; 156 L. Ed. 2d 84 (2003). By affirming the lower court's erroneous requirement for direct evidence, the Louisiana Supreme Court ruled against this Honorable Court's mandates.

The Seagrave Court based its findings on Title VII of the Civil Rights Act of 1964 and its interpretation in *Krystek v. University of Southern Mississippi*, 164 F.3d 251, 256 (5th Cir. 1999). However, the circuits have been split on the issue of what evidentiary weight, if any, courts should assign discriminatory remarks that may not amount to the level of direct evidence. Several federal courts of appeal have ruled that, even though too remote in time, a discriminatory comment made by the decisionmaker should nevertheless be afforded weight as circumstantial evidence. Some have ruled

that, even if made by a non-decisionmaker, such comments should still be afforded probative value, at least to show the bias-charged atmosphere in which the adverse employment decision was made. And some, including *Krystek*, supra, at 256, that the Seagrave court erroneously relied upon, have never considered what weight to give such discriminatory comments, if any, in the event they don't qualify as direct evidence. This Honorable Court should now step in and settle this matter.

Respectfully submitted,

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The Supreme Court of the State of Louisiana

LOREN SEAGRAVE

VS. No. 2005-C-2349

ROBERT JOE DEAN, PATRICK S. HENRY,
AND THE BOARD OF SUPERVISORS OF
THE LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICHAL COLLEGE

IN RE: Seagrave, Loren R. ; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Div. M, Nos. 352,739; to the Court of Appeal, First Circuit, No. 2003 CA 2272

March 17, 2006

Denied.

JPV
PFC
BJJ
CDT
JTK
JLW

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 2003-CA-2272

LOREN SEAGRAVE

Versus

ROBERT JOE DEAN,
PATRICK S. HENRY,
AND THE BOARD OF
SUPERVISORS OF
THE LOUISIANA STATE
UNIVERSITY AND
AGRICULTURAL AND
MECHANICHAL COLLEGE

19th Judicial District Court
Case #: 352739
East Baton Rouge Parish

On application for rehearing filed 06/24/2005

Rehearing DENIED.

Vanessa G. Whipple
John M. Guidry
E James Gaidry
J. Michael McDonald
Page McLendon

Guidry, J. would grant the rehearing.
Filed Aug 23, 2005

Christine L. Crow, Clerk

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2003 CA 2272

LOREN SEAGRAVE

VERSUS

ROBERT JOE DEAN, PATRICK S. HENRY,
AND THE BOARD OF SUPERVISORS OF THE
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICHAL COLLEGE

Judgment Rendered: June 10, 2005
*****

Appealed from the Nineteenth Judicial District Court In and
For the Parish of East Baton Rouge
State of Louisiana
Suit Number 352,739
Honorable Kay Bates, Presiding
****

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Keith Grant
Troy D. Jackson
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
Loren R. Seagrave

Todd S. Manuel
G. Michael Pharis
Baton Rouge, Louisiana

Counsel for Defendants/Appellants

****

BEFORE: WHIPPLE, GUIDRY, GAIDRY, McDONALD
AND McCLENDON, JJ.

Guidry, J. dissents and assigns reasons
McClendon, J. concurs and assigns reasons.

GAIDRY, J.

In this racial discrimination action, defendants, Robert Joe Dean (Dean), Patrick S. Henry, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, appeal the trial court's judgment in favor of plaintiff, Loren Seagrave (Seagrave), awarding him damages for lost wages and emotional distress. For the reasons that follow, we reverse the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Seagrave started working for the Louisiana State University and Agricultural and Mechanical College (Louisiana State University) in August of 1983 as an Assistant Men's and Women's Track Coach. Thereafter, in July 1985, he received a promotion and became Head Women's Track Coach. In 1987, then Head Track Coach Billy Maxwell resigned and Seagrave approached Dean, Louisiana State University's Athletic Director, and requested that he be considered for the Head Track Coach position. Dean told Seagrave that he was looking for someone with experience coaching an entire track program, that Seagrave did not have the desired experience, and that it would be difficult to market an assistant coach to alumni. In July 1987, Louisiana State University hired Patrick Henry as the university's new Head Track Coach. Seagrave continued to work with the track program and retained the title of Head Women's Coach.

In spring of 1989, the Louisiana State University track team conducted its spring training in Tampa, Arizona. While traveling back from Arizona, Seagrave approached Henry and informed him of an all-night "counseling session" he had with a female athlete at his vacant rental property on Alaska Street in Baton Rouge. This "counseling session" had occurred in July of 1988 when the female athlete requested to

speak with Seagrave regarding some personal problems she was experiencing. Seagrave approached Henry on the way back from Arizona because he was concerned that the female athlete's boyfriend would be at the airport in Baton Rouge and was going to speak to others about the situation.

Upon his arrival back in Baton Rouge, Henry informed Dean of his conversation with Seagrave. A meeting was held between Seagrave, Henry, and Dean whereupon Seagrave was asked to resign his position; Seagrave refused. A notice was thereafter sent to Seagrave, informing him that an official letter of reprimand would be placed in his personnel file. Thereafter, Seagrave discussed this situation with the track team and the media. On April 12, 1989, Seagrave was given a notice that his employment would be terminated effective May 12, 1989. This notice incorrectly referred to Seagrave as an Assistant Track Coach. On April 18, 1989, a second notice of termination was sent to Seagrave, correctly stating his title as Head Women's Track Coach, and changed the effective date of his termination to May 15, 1989.

On April 18, 1989, Seagrave filed a grievance with Louisiana State University. A grievance hearing before the Vice Chancellor for Administrative Services was held on May 9, 1989, even though Seagrave was an at-will employee.[1] Seagrave's termination was not reversed.

In January of 1990, Seagrave filed the instant lawsuit, naming Dean, Henry, and the Board of Supervisors of Louisiana Stat University as defendants. In his petition, Seagrave asserts claims for abuse of rights, defamation, and racial discrimination in violation of La. R. S. 23:1006. According to Seagrave, he was terminated because of his

---

[1] Seagrave also filed an action in federal district court in 1989, which was dismissed in 1992 based in part on a finding that Seagrave was an at-will employee. In this appeal, neither party disputes Seagrave's employment status.

marriage to an African-American woman. [2] On February 5, 2003, defendants filed a Motion in Limine, seeking to exclude evidence relating to the 1987 hiring of Patrick Henry as the new Head Track Coach. The motion was set to be heard on February 18, 2003, but was continued to the trial on the merits. The trial began on February 24, 2003. On that same date, defendants filed a motion to strike the jury based on La. R. S. 13:5105, which provides that no suit against the state, a state agency,, or a political subdivision shall be tried by a jury. Apparently finding that defendants' motion to strike was moot, the trial court continued to empanel the jury.[3]

At the conclusion of Seagrave's case in chief, defendants moved for a directed verdict. The trial court thereafter dismissed Seagrave's defamation claim and found that his abuse of rights claim was subsumed within his racial discrimination claim. Therefore, the only claim left before the jury for determination was the racial discrimination claim. On February 27, 2003, the jury returned a verdict finding in favor of Seagrave and awarding him $423,000 in lost wages and $350,000 in general damages for emotional distress. On April 2, 2003, the trial court entered a judgment against the defendants for the amounts reflected in the jury's verdict, plus legal interest. Defendants now appeal from this judgment and assert the following assignments of error:

1. The trial court improperly denied defendants' motion to strike the jury.
2. The trial court improperly denied defendants' motion in limine to exclude testimony regarding the isolated comment attributed to Dean.
3. The trial court erred in finding that Seagrave satisfied his burden of proving race-based discrimination.

---

[2] Seagrave is Caucasian.

[3] The matter of defendants' motion to strike was not taken up on the record. The order attached to defendants' motion simply stated "This is moot?!" without any signature of further explanation.

4. The trial court erred in failing to instruct the jury on the law regarding employment discrimination when it failed to define "isolated comment" or provide any standards to guide the jury as to the weight to be given to isolated comments.
5. The jury verdict awarding Seagarve damages for the lost wages and emotional distress is erroneous because Seagrave failed to prove such damages.
6. The jury's allocation of liability to Dean and Henry is contrary to law because these individuals were not Seagrave's employer.

DISCUSSION

Racial Discrimination

Appellants assert that the jury erred in finding that Seagrave satisfied his burden of proving race-based discrimination. At the time this action was filed, La. R. S. 23:1006[4] governed discrimination in employment based on account of race, color, religion, sex or national origin and provided in part:

> B. It shall be unlawful discrimination in employment for an employer to:
> (1) intentionally fail or refuse to hire, refer, discharge, or to otherwise intentionally discriminate against or in favor of an individual with respect to compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.
> (2) intentionally limit, segregate, or classify an employment in a way which would deprive an individual of employment opportunities, give a favor

[4] La. R. S. 23:1006 was repealed by section 4 of Acts 1997, No. 1409, effective August 1, 1997. Employment discrimination on account of race, color, religion, sex, or national origin is now governed by La. R.S. 23:332.

> or advantage to one individual over another, or otherwise adversely or favorably affect the status of an employee because of race, color, religion, sex or national origin. Provided, however, that nothing contained herein shall be construed as to create a cause of action against any employer for employment practices pursuant to any affirmative action plan.

Because La. R S. 23:1006 is similar in scope to the federal prohibition against discrimination, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et.seq.*, Louisiana courts have looked to federal jurisprudence to interpret Louisiana discrimination laws. *King v. Phelps Dunbar, L.L.P.*, 98-1805, p.7 (La. 6/4/99), 743 So.2d 181, 187.

Under federal law, the plaintiff bears the burden of proving that the defendant intentionally discriminated against him on the basis of race. Therefore, the scheme of proof under federal jurisprudence required that the plaintiff first establish a prima facie case of racial discrimination. *Asbestos Plaintiffs v. Borden, Inc.*, 01-1379, p.9 (La. App. 4 Cir. 8/14/02) 826 So.2d 581, 589, *writ denied,* 02-2377 (La. 11/22/02), 829 So.2d 1046; *LaPierre v. Benson Nissan, Inc.*, 86 F.3d 444, 448 (5th Cir. 1996). When the discrimination claim is based on circumstantial evidence, as is usually the case, the well-established burden-shifting analysis provided in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 1824-25, 36 L. Ed. 2d 668 (1973), applies. A plaintiff is first required to establish a prima facie case by showing that he: (1) is a member of a protected class;[5] (2) was qualified for the position; (3) was terminated; and (4) was replaced by someone outside the protected class. *Deffenbaugh-Williams v. Wal-Mart Stores, Inc.*, 156 F.3d

[5] Although not an issue before this court, we note that Title VII prohibits discrimination in employment premised on an interracial relationship. *Deffenbaugh-Williams*, 156 F.3d at 589.

581, 587 (5th Cir. 1998), *rehearing en banc granted,* 169 F. 3d 215 (5th Cir.) *opinion reinstated in pertinent part,* 182 F.3d 333 (5th Cir. 1999). Once established, the plaintiff's prima facie case raises an inference of intentional discrimination and the burden of production then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the challenged employment action. If the defendant comes forward with a reason, which, if believed, would support a finding that the challenged action was nondiscriminatory, the inference raised by the plaintiff's prima facie case drops from the case. *LaPierre,* 86 F.3d at 448. The plaintiff then has the full and fair opportunity to demonstrate that the proffered reason was not the true reason for the employment decision and that race was. *McDonnell Douglas*, 411 U.S. 804-805, 93 S. Ct. 1817, 1825-1826; *Waltman v. Bisco industries, Inc.,* 119 F.3d 368, 371 (5th Cir. 1997).

After a case has been fully tried on the merits, the *McDonnell Douglas* burden-shifting analysis ceases to be of import to an appellate court. Instead, our inquiry becomes whether the record contains sufficient evidence to support the conclusions reached by the jury. *Deffenbaugh-Williams,* 156 F.3d at 587. When there is a conflict in the testimony, reasonable inferences of fact and reasonable evaluations of credibility should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings. *Rosell v. ESCO,* 549 So.2d 840, 844 (La. 1989).

In the instant case, defendants first assert that Seagrave did not establish a prima facie case because he did not show he was replaced by someone outside the protected

class. In particular, defendants claim that Seagrave had to show he was replaced by someone who was neither an African-American, nor married to an African-American. However, the relevant protected class in this case is not African-Americans as asserted by defendants, but rather is someone engaged in an interracial relationship. *See Deffenbaugh-Williams*, 156 F.3d at 589. Evidence was introduced that Myrtle Chester Ferguson, an African-American female, assumed Seagrave's responsibilities with the women's track team following his termination. There was no evidence that Ms. Ferguson was engaged in an interracial relationship. Therefore, we find that the jury could reasonably conclude that Seagrave established he was replaced by someone outside of his protected class and otherwise established a prima facie case of racial discrimination as outlined above.

The defendants next argue that they came forth with sufficient evidence to show a legitimate, nondiscriminatory reason for Seagrave's termination. In particular, defendants assert that the reason Seagrave was terminated was because of his inappropriate behavior in engaging in an all-night "counseling session" with one of his female athletes. According to Dean and Henry, they viewed this type of conduct as unbecoming of a teacher or coach entrusted with the well-being of students and justifying Seagrave's immediate termination.

In support of his contention that race was the true reason for his termination, Seagrave introduced testimony of an alleged comment made by Dean during the 1987 hiring process of the New Head Track Coach. Samuel Semmes, a former assistant track coach and interim Head Track Coach with Louisiana State University, testified at trial that during a conversation with Dean, Dean informed him that Seagrave would not be considered for the Head Track Coach position because he only had experience coaching women and because he was going to marry a black woman.

In order for comments in the workplace to provide sufficient evidence of discrimination, they must be (1) related to the protected class of persons of which the plaintiff is a member; (2) proximate in time to the termination; (3) made by an individual with authority over the employment decision; and (4) related to the employment decision at issue. *Krystek v. University of Southern Mississippi,* 164 F.3d 251, 256 (5th Cir. 1999). Mr. Dean's alleged comment did not satisfy the criteria for workplace comments to be sufficient evidence of discrimination. The comment the plaintiff alleges Dean made about interracial relationships was allegedly made during the 1987 hiring process for the university's Head Track Coach. As the employment decision at issue in this suit is Seagrave's 1989 termination as the Head Coach of Women's Track team, this earlier comment is neither proximate in time to the employment decision nor related to the employment decision at issue. Therefore, this alleged comment cannot provide sufficient evidence of discrimination, and Seagrave failed to prove his claim of race-based discrimination. The jury was clearly wrong in finding otherwise.

Because we find that Seagrave failed to meet his burden of proving his racial discrimination claim, it is unnecessary for us to address defendants' remaining assignments of error.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed. All costs of this appeal in the amount of $3,093.29 are to be borne by plaintiff, Loren Seagrave.

REVERSED.

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2003 CA 2272

LOREN SEAGRAVE

VERSUS

ROBERT JOE DEAN, PATRICK S. HENRY, AND THE BOARD OF SUPERVISORS OF THE LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICHAL COLLEGE

GUIDRY, J., dissents and assigns reasons.

GUIDRY, J., dissenting.

I disagree with the majority opinion, finding the jury's determination that Seagrave proved his claim of race-based discrimination was erroneous. In reviewing this matter, our inquiry is whether the record contains sufficient evidence to support the conclusions reached by the jury. Deffenbaugh-Williams v. Wal-Mart Stores, Inc., 156 F.3d 581, 587 (5th Cir. 1998). The majority correctly points out that Seagrave produced evidence sufficient to establish a prima facie case of racial discrimination. After addressing the defendants' evidence of a nondiscriminatory reason for Seagrave's termination, the majority then apparently rests the whole of its determination on its findings that the alleged comment made by Dean was neither proximate in time nor relate to Seagrave's termination. However, when evaluating the evidence in support of Seagrave's prima facie case, together with the alleged comment, I find that the record contained sufficient evidence to support the jury's determination. Further, as the questions of proximity and

relation are factual in nature, I find that the jury, as factfinder, was in the best position to make those findings, though this court may have weighed the evidence differently. Rosell v. Esco, 549 So. 2d 840, 844 (La. 19898).

Therefore, for the foregoing reasons, I respectfully dissent.

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2003 CA 2272

LOREN SEAGRAVE

VERSUS

ROBERT JOE DEAN, ET AL

****

McCLENDON, J., concurs, with reasons.

For the following reasons, I respectfully concur. I agree with the opinion's basic analysis, but do not find that an employer must hire from a specific sub-class. In **Deffenbaugh-Williams v. Wal-Mart Stores, Inc.**, 156 F.3d 581, 587 (5th Cir. 1998) the court set four elements required for a plaintiff to establish a prima facie case of discrimination as follows. The plaintiff must show that 1) he is a member of a protected class; 2) he was qualified for the position; 3) he was terminated; and 4)he was replaced by someone outside the protected class. *Id.*, At 587. Herein, the protected class is African-Americans. Interracial couples constitute a sub-class of this protected class. Mr. Seagrave was replaced with an African-American woman. Therefore, the employer hired within the protected class. It would lead to absurd results to require an employer to hire not only within the protected class, but also within a specific sub-class. For these reasons, I believe Mr. Seagrave failed to carry his burden of proof.

Alternatively, LSA-R. S. 13:5105 states that an action against the State of Louisiana shall be tried without a jury. The evidence of record is not sufficient to draw the conclusion that "the motion was not received until the trial and jury selection had begun." Rather, the record is

insufficient for us to adequately review this issue. Therefore, alternatively I would remand this case to the trial court for supplementation of the record. However, it is not necessary to address the issue to achieve the correct result in this case.

LOREN SEAGRAVE	19TH JUDICIAL DISTRICT COURT
VERSUS	DOCKET NUMBER: 352, 739-M
ROBERT JOE DEAN, PATRICK S. HENRY, AND THE BOARD OF SUPERVISORS OF THE LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICHAL COLLEGE	

JUDGMENT

The Motion for Judgment Notwithstanding the Verdict, New Trial or Remittur filed by defendants Robert Joe Dean, Patrick S. Henry, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, came on for hearing on the 23rd day of June, 2003.

Present was:

Dan M. Scheuermann	Counsel for Plaintiff, Loren Seagrave
G. Michael Pharis and Todd Manuel	Counsel for defendants Robert Joe Dean, Patrick S. Henry, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

The Court having considered the law, the evidence and the memoranda filed by counsel, and for the reasons orally assigned:

IT IS HEREBY ORDERED that the defendants' Motion Judgment Notwithstanding the Verdict, New Trial or Remittur is hereby denied. The jury's verdict rendering judgment against defendants in the amount of FOUR HUNDRED TWENTY-THREE THOUSAND DOLLARS AND NO/CENTS ($423,000.00) for lost wages and an additional THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/CENTS ($350,000.00) in damages, for a total of SEVEN HUNDRED SEVENTY-THREE THOUSAND DOLLARS AND NO/CENTS (773,000.00) plus interest at the prevailing percentage rate per annum from the date of judicial demand, January 12, 1990 shall stand.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants pay all court costs in this matter.

JUDGMENT READ AND SIGNED this 1 day of July, 2003.

JUDGE, 19TH JUDICIAL DISTRICT COURT

Please serve Judgment to:

Mr. G. Michael Pharis
Mr. Todd Manuel
Taylor, Porter, Brooks & Phillips
8th Floor, 451 Florida Boulevard
P.O. Drawer 2471
Baton Rouge, LA 70821

LOREN SEAGRAVE	19TH JUDICIAL DISTRICT COURT
VERSUS	DOCKET NUMBER: 352, 739-M
ROBERT JOE DEAN, PATRICK S. HENRY, AND THE BOARD OF SUPERVISORS OF THE LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICHAL COLLEGE	

JUDGMENT

This matter having been duly tried before and submitted to the jury and the jury having, on February 27, 2003, returned a verdict:

IT IS ORDERED, ADJUDGED AND DECREED, that the said verdict be, and ii is hereby made the judgment of this Court, that the Defendants, Robert Joe Dean, Patrick S. Henry, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, are hereby condemned to pay plaintiff, Loren R. Seagrave, the sum of FOUR HUNDRED TWENTY-THREE THOUSAND DOLLARS AND NO/CENTS ($423,000.00) for lost wages and an additional THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/CENTS ($350,000.00) in damages, for a total of SEVEN HUNDRED SEVENTY-THREE THOUSAND DOLLARS AND NO/CENTS (773,000.00) plus interest at the prevailing percentage rate per annum from the date of judicial demand, January 12, 1990.

JUDGMENT RENDERED on the 27th day of February, 2003.

JUDGMENT READ AND SIGNED this 2nd day of April, 2003.

JUDGE, 19TH JUDICIAL DISTRICT COURT

Please serve notice of Judgment on:

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FILED

APR 02 2003

DEPUTY CLERK OF COURT

STATUTES INVOLVED

La. R.S. 23:1006 (repealed by Section 4 of Acts 1997, No. 1409, effective August 1, 1997. Employment discrimination on account of race, color, religion, sex or national origin is now governed by La. R.S. 23:332) provides, in pertinent part:

> B. It shall be unlawful discrimination in employment for an employer to:
>
> (1) intentionally fail or refuse to hire, refer, discharge, or to otherwise intentionally discriminate against or in favor of an individual with respect to compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.
>
> (2) intentionally limit, segregate, or classify an employment in a way which would deprive an individual of employment opportunities, give a favor or advantage to one individual over another, or otherwise adversely or favorably affect the status of an employee because of race, color, religion, sex or national origin. Provided, however, that nothing contained herein shall be construed as to create a cause of action against any employer for employment practices pursuant to any affirmative action plan.

Title VII of the Civil Rights Act of 1964, 42 USC 2000 et.seq., provides, in pertinent part:

§ 2000e-2. Unlawful employment practices

(a) Employer practices. It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(2)

No. 05-1604

Supreme Court, U.S.
FILED
AUG 16 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOREN SEAGRAVE,

Petitioner,

v.

ROBERT JOE DEAN, PATRICK S. HENRY AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

BRIEF IN OPPOSITION

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I

STATEMENT OF THE CASE

A. Factual Background

In August 1983, Loren Seagrave began his employment with Louisiana State University ("LSU") as an Assistant Track Coach III with the LSU Track Team. R. 429, Exh. D-4. Although initially hired to work with both the men and women's track teams, over time Seagrave's duties evolved into primarily coaching female athletes. R.432 In fact, after a successful 1984 season with the women's team, petitioner was promoted to Head Coach of Women's Track. The promotion became effective July 1, 1985. R.432.

In January 1987, Billy Maxwell, LSU's Head Track Coach, announced his resignation. Following Coach Maxwell's resignation, the LSU Athletic Department began the process of hiring a new Head Track Coach. During the hiring process, Seagrave approached then Athletic Director, Robert Joe Dean ("Dean"), and requested that he be considered for the position. R.441, 442. He did not, however, submit a formal application for the position. In fact, prior to speaking with Dean Seagrave had never expressed an interest in the position either verbally or written. Seagrave had supported assistant coach, Samuel Semmes, in his bid for the head coaching job. R,335.

After their initial conversation, Dean advised Seagrave that LSU wanted to hire someone with experience as the head coach of an entire track program and petitioner did not have the required experience. R.335, 336. Dean also told Seagrave that it would be difficult to market an assistant coach to alumni and other supporters of the track program. R.336. Nonetheless, because of petitioner's previous success with

the women's track team, Dean personally requested that he continue working with the track program as Head Women's Track Coach. R.442.

On July 1, 1987, LSU hired Patrick Henry ("Henry") for the Head Track Coach position. R.553, 554; Exh. D-4. Seagrave continued to work with the program just as he had previously done as a member of former Head Coach, Billy Maxwell's staff, working primarily with the women's track team. R.442. In fact, petitioner retained the title of Head Coach of Women's Track.

In the spring of 1989, the LSU track team conducted its annual spring training in Tempe, Arizona. R.269, 487. While traveling home from Arizona, Seagrave informed Henry about an inappropriate relationship between himself and a female athlete. R.269-271. According to petitioner, in July 1988, he and a female athlete spent a night together at a vacant home he owned. R.270, 479, 480. Although Seagrave describes the evening with the athlete as simply a "counseling session," the uncontradicted statement of the female athlete was that she and Seagrave engaged in a physical relationship. Exh. P-15.

Loren Seagrave's decision to bring his relationship with the female to Henry's attention was prompted by his belief that her fiancé had tape recorded a conversation during which he and the fiancé discussed the relationship. R.490-493. Seagrave also believed that the fiancé was possibly waiting at the Baton Rouge airport for the team to arrive and that he may be planning to speak with Dean regarding the relationship. R.270, 271, 377, 492, 493.

Upon arriving in Baton Rouge, Henry contacted his direct supervisor, Assistant Athletic Director, Stephen Carter, and reported the situation involving Seagrave and the female athlete. R.377-379. Henry and Carter then scheduled a meeting with Dean and explained the situation to him. R.341, 342, 380. Seagrave was later asked to meet with Henry, Carter and Dean, and was given an opportunity to explain the nature of his relationship with the athlete. R.344. During the course of the meeting, petitioner did not deny that inappropriate conduct had occurred between himself and the young woman. R.344, 380, 382, 383. At the conclusion of the meeting, Dean asked Seagrave to consider resigning from the program; Seagrave refused to do so. R.282, 353.

After speaking with petitioner, Dean, Carter, Henry also met with the female athlete. R.283. During the course of that meeting, she confirmed her relationship with petitioner and the fact that they had engaged in intimate activities. R.345-347. Following this meeting, Dean, Carter and Henry met with Seagrave a second time to discuss disciplinary measures that would be taken by LSU. R.350, 351. At that time, petitioner was informed that his salary would be frozen and that he would be placed on probation. R.350, 351. On April 5, 1989, Dean forwarded an official letter of reprimand to petitioner. Exh. P-13. The letter informed Seagrave that the Athletic Department would not tolerate inappropriate behavior by members of the coaching staff with athletes and that the reprimand would be placed in his personnel file.

Throughout the course of Dean and Henry's investigation of Seagrave's relationship with the female athlete, care was always exercised to ensure that neither the female nor petitioner would be injured through the public disclosure of their relationship. R.277, 278, 356. In fact, following the

second meeting with Seagrave, Henry instructed him not to discuss the matter with any other members of the track team. R.303-305. Despite Henry's instruction, however, petitioner met with members of the team and told them about his "counseling session" with the female athlete. R.303-305.

In addition to informing other athletes about the "counseling session," Seagrave also spoke with members of the press. R.416, 417. On April 4, 1989, petitioner attended a banquet given in honor of the women's track team. R.408, 409. Also present at the banquet was free-lance writer, Ruth Laney, who was writing an article for *Tiger Rag* magazine. R.408, 409. Following the banquet Laney interviewed Seagrave regarding his role with the track team. R.416. During the course of the interview, he told Laney about his "all-night counseling session" with the female athlete and the Athletic Department's response to the relationship. R.416, 417. Shortly after Laney's interview, an article recounting her conversation with the petitioner was published in *Tiger Rag* magazine. R.414.

On April 12, 1989, petitioner was given notice that his employment would be terminated effective, May 12, 1989 and that he would be reassigned within the Athletic Department and relieved of his duties as an assistant track coach. Exh. P-13. The notice also informed Seagrave that if he wished to protest the action he should notify the Athletic Department prior to the effective date of his termination.

In the April 12th notice of termination, Seagrave was identified by the title, Assistant Track Coach. Although Seagrave was an assistant coach for all intents and purposes, his correct title at the time of the April 12th notice was Head Coach of Women's Track. On April 18, 1989, a second notice

of termination reflecting petitioner's correct title was forwarded to his attention. Exh. P-13. The second notice changed the effective date of his termination to May 15, 1989. The notice also informed him that if he did not wish to avail himself of the temporary assignment, he could use any leave that he may have accumulated up to that point in time. Seagrave's temporary assignment was unaffected by the second notice.

On April 18, 1989, Seagrave filed a grievance with LSU claiming that he was terminated without basis and that LSU did not follow proper procedure. R.6. Although he was an at-will employee, Seagrave was given an opportunity to explain his position during a grievance hearing held on May 9, 1989.[1] R.7. He and his attorney, Alton Moran, met with the Vice Chancellor for Administrative Services to discuss petitioner's termination. Seagrave's termination was not reversed following the grievance hearing and he subsequently filed this suit.

B. Proceedings Below

On January 12, 1990, petitioner, Loren R. Seagrave, filed this lawsuit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana. R.4-12. Respondents, Robert Joe Dean, Patrick S. Henry and The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU") were named as defendants. R.4-12.

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1. Recognizing petitioner's status as an at-will employee, on July 1, 1991, the Federal District Court for the Middle District of Louisiana held that petitioner was an unclassified employee of the State of Louisiana, employed for an *indefinite* period of time at the will and pleasure of his employer and that he had no property interest in continued employment with the state. R.30.

The crux of Seagrave's suit was that he had been subjected to race-based discrimination under Louisiana Revised Statute 23:1006. Specifically, petitioner claimed that he was terminated from his position as LSU's Head Women's Track Coach because of his marriage to an African-American. R.4-12. Respondents denied petitioner's allegations and maintained that petitioner's employment with the university was terminated because of his inappropriate conduct with a female athlete.

In addition to his claim of race-based discrimination, petitioner also asserted claims under the Louisiana abuse of rights doctrine and for defamation. R.4-12. Essentially, the claims asserted in Seagrave's state court suit mirrored those asserted in a suit that he had previously filed in Federal District Court for the Middle District of Louisiana on May 24, 1989. R.13. The Federal Court suit was dismissed in its entirety without prejudice on February 18, 1992. R.98.

After over ten years of litigation, a trial date was finally set and the matter tried for February 24 - 27, 2003. At the conclusion of petitioner's case, respondents moved for directed verdict based on petitioner's failure to present evidence sufficient to establish his claims of race discrimination, defamation and abuse of rights. R.600. After considering respondent's motion, petitioner's claim of defamation was dismissed. R.606. The court also dismissed petitioner's abuse of rights claim inasmuch as it was encompassed within his race discrimination claim. Consequently, the only claim that was submitted to the jury for consideration was petitioner's race-based discrimination claim related to the termination of his employment with LSU. R.181. After deliberating, the jury returned a verdict against respondents and in favor of the petitioner awarding Seagrave lost wages in the amount of $423,000.00, and general damages in the amount of $350,000.00. R.181.

On April 10, 2003, a Motion for Judgment Notwithstanding the Verdict ("JNOV"), New Trial and Remittitur was filed on behalf of respondents. R.184-187. Within the motion respondents addressed several aspects of the jury's verdict. Specifically, respondents contended that the jury's verdict is unreasonable as a matter of law, tainted by legal error, contrary to the evidence presented at trial and clearly excessive. Following a June 23, 2003, hearing on respondent's Motion for JNOV, the Trial Court entered a ruling upholding the jury's verdict. R.237.

On July 17, 2003, respondents filed a Motion for Suspensive Appeal. R.239, 240. On July 18, 2003, the Trial Court entered an order granting defendants' Motion for Suspensive Appeal to the Louisiana First Circuit Court of Appeal.

On December 9, 2003, an Appeal Brief was filed with the First Circuit Court of Appeal on behalf of respondents. In the appeal respondents requested that the Court reverse the jury verdict that was returned in favor of the petitioner, Loren Seagrave. On August 12, 2004, a three judge panel of the Louisiana First Circuit Court of Appeal heard oral arguments on respondents' assignments of error.

Following the August 12, 2004 arguments, the First Circuit requested that the parties return on October 22, 2004, for an additional hearing before a five judge panel. On June 10, 2005, the First Circuit rendered its ruling completely reversing the jury verdict in favor of Loren Seagrave. The First Circuit held that petitioner failed to meet his burden of proving his racial discrimination claim. The First Circuit also ordered that petitioner bear all costs of the appeal in the amount of $3,093.29.

On June 24, 2005, Loren Seagrave filed an application for rehearing with the First Circuit. The First Circuit denied petitioner's application for rehearing and he subsequently filed a writ application to the Louisiana Supreme Court. A six judge panel of the Louisiana Supreme Court unanimously denied petitioner's writ application. On June 16, 2006, Loren Seagrave file his petition for writ of certiorari with the United States Supreme Court.

REASONS FOR DENYING THE PETITION

A. Petitioner Has Not Asserted Adequate Grounds For The Supreme Court To Exercise Jurisdiction In This Matter.

In his petition for writ of certiorari petitioner asserts that this Court's exercise of jurisdiction is grounded in 28 U.S.C. § 1257. When considered in the context of the longstanding jurisprudence addressing the Court's exercise of jurisdiction under 28 U.S.C. § 1257, however, it clear that the petitioner's claim is not properly before the Court. According to the provisions of 28 U.S.C. § 1257,

> **(a)** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

> **(b)** For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. § 1257.

Petitioner originally filed suit in Federal District Court for the Middle District of Louisiana on May 24, 1989. R.13. On July 16, 1991, the Federal Court dismissed several of petitioner's claims. The remaining claims were later dismissed without prejudice on February 18, 1992. R.98. Although petitioner later filed suit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana, it is important to note that he did not assert a cause of action under 42 U.S.C. § 2000, which he now claims is the basis for this Court asserting jurisdiction. In fact, after nearly three and a half years of prosecuting this matter through Louisiana appellate courts, only now has petitioner seen fit to attempt to state a cause of action under 42 U.S.C. § 2000.

Petitioner's attempt, however, to invoke the Court's jurisdiction by pleading a cause of action under 42 U.S.C. § 2000 at this late juncture is futile at best. Indeed, the law is "clear that [the] Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised." *Edelman v. California*, 344 U.S. 357, 358 (1953). Not only is it required that a federal question be raised, but it must be raised at the proper time. "It is elementary that a federal question may not be imported into a record for the first time by way of assignments of error made for purposes of review." *Manhattan Life Insurance Co. v. Cohen*. 234 U.S. 123 (1914). Thus, incorporating a federal question for the first time into an assignment of error is not proper.

Without an asserted federal claim, there is no federal question in the present case. Petitioner did not assert a federal discrimination claim in state court; therefore, no federal question or issue was before the state court. "It is not sufficient that a right under a specified provision of the Constitution or Code is merely alleged in a pleading, if the federal question is not sufficiently real or substantial, or if the state court did not pass on the federal question presented in the pleading." 4 Am. Jur. 2d Appellate Review § 36.

"With 'very rare exceptions,' the Court has adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision it has been asked to review. *Adams v. Robertson*, 520 U.S. 83, 86 (1997). According to this Court's holding in *Adams*, when the highest state court is silent on a federal question before it, the Court will assume that the issue was not properly presented and the aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had "a fair opportunity to address the federal question that is sought to be presented." *Adams*, 520 U.S. at 86.

B. Petitioner Incorrectly Assumes That The Louisiana Appellate Court Failed to Review The Entire Record.

Petitioner argues that the Louisiana Supreme Court erred when it affirmed the Louisiana First Circuit Court of Appeal's reversal of the jury verdict on petitioner's employment discrimination claim where the lower court failed to review the record in its entirety. This assignment is premised on an assumption and is unsupported by the record.

Petitioner bases his assumption on a statement in the state appellate court's decision that because "Seagrave failed to meet his burden of proving his racial discrimination claim, it [was] unnecessary for [the court] to address [respondents'] remaining assignments of error." It is the petitioner's contention that a review of respondents' remaining assignments of error would have exposed the court to the entire record. Respondents submit otherwise. Aside from the court's language which fails to establish his point, petitioner can produce not one iota of evidence which even remotely suggests that the appellate court did not review the entire record.

Once the appellate court determined that petitioner had not satisfied his burden of proving race based discrimination there was clearly no need to address the remaining assignments of error. Clearly if there is no finding of discrimination, it only follows that there should not be a find as to damages based on a claim of discrimination. Petitioner's assignment is without merit and constitutes nothing more than an unsupported assumption.

C. The Weight to be Afforded A Stray Comment

Lastly petitioner claims that the Louisiana appellate court did not afford the proper weight to the "stray comment" that he attributed to respondent, Robert Joe Dean. The crux of petitioner's argument is that in making its determination of whether the petitioner satisfied his burden of proof, the appellate court only considered direct evidence and failed to afford the alleged "stray comment" any weight as circumstantial evidence. Again, petitioner's assignment is based on an assumption that is wholly unsupported by the record.

In the conclusion to his petition for certiorari, petitioner states that the appellate court "erroneously ruled that Joe Dean's comment did not amount to direct evidence and, therefore, Loren Seagrave could show no case of discrimination." Petitioner's statement is not only a bold assumption, but also incorrect. Nowhere in the appellate court's ruling does the court even mention the phrase "direct evidence." Instead, the court states that "Mr. Dean's alleged comment did not satisfy the criteria for workplace comments to be *sufficient evidence* of discrimination." (emphasis added). Respondents submit that this assignment is without merit.

CONCLUSION

For all of the foregoing reasons, respondents, Robert Joseph Dean, Patrick S. Henry and The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College respectfully request that this Honorable Court deny the petition for writ of certiorari.

Respectfully submitted,

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